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10 USAA CASUALTY INSURANCE COMPANY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SUSAN SEYSTER, an individual; and
JONATHAN SEYSTER, an individual,

CASE NO. 2:19-CV-01042-DMG-JDE

Plaintiffs,

V.

United Services Automobile Association,
a Texas Corporation; USAA
CASUALTY INSURANCE COMPANY,
a Texas Corporation, and DOES 1
through 50, inclusive.

**DEFENDANT USAA CASUALTY
INSURANCE COMPANY'S
NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

Defendants

Hearing Date: November 22, 2019
Hearing Time: 2:00 p.m.
Department: 8C
Judge: Hon. Dolly M. Gee
Cmplt. Filed: February 13, 2018

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on November 22, 2019 or as soon
3 thereafter as counsel may be heard by the above-entitled court located at United
4 States Courthouse, 350 West 1st Street, Los Angeles, CA 90012 in Courtroom 8C on
5 the 8th Floor, Defendant USAA Casualty Insurance Company (“USAA CIC”) will,
6 and hereby does, move for Summary Judgment, or in the alternative, Partial
7
8 Summary Judgment under the Federal Rules of Civil Procedure Rule 56 as follows:

9 1. USAA CIC is entitled to summary judgment on the grounds that
10 Plaintiffs’ first cause of action for breach of contract, second cause of action for
11 breach of the covenant of good faith and fair dealing, and the third cause of action for
12 unfair business practices, and claim for punitive damages fail as a matter of law
13 because the uncontested facts establish that the customized, post-market
14 modifications made to Plaintiffs’ vehicle do not fall within the coverage provided by
15 the insurance policy issued by USAA CIC and USAA CIC paid all monies owed to
16 Plaintiffs for the damage to the non-modified aspects of Plaintiffs’ vehicle and for
17 rental reimbursement and storage fees.

18 2. In alternative, USAA CIC is entitled to partial summary judgment of
19 Plaintiffs’ first cause of action for breach of contract because the uncontested facts
20 establish that the customized, post-market modifications made to Plaintiffs’ vehicle
21 do not fall within the coverage provided by Plaintiffs’ insurance policy issued by
22 USAA CIC and USAA CIC paid all monies owed to Plaintiffs for the damage to the
23
24

1 non-modified aspects of Plaintiffs' vehicle and paid the limits of the automobile
2 rental reimbursement coverage. By accepting the \$29,157.37 paid by USAA CIC,
3 Plaintiffs have waived any claim to the alleged benefits they claim are owed.
4

5 3. In the alternative, USAA CIC is entitled to partial summary judgment of
6 Plaintiffs' second cause of action for breach of the implied covenant of good faith
7 and fair dealing because the uncontested facts establish that USAA CIC conducted
8 a reasonable and prompt investigation of Plaintiffs' claim, and Plaintiffs are not
9 entitled to additional benefits because all benefits owed under Plaintiffs' insurance
10 policy were paid by USAA CIC. USAA CIC overpaid the claim by including the
11 market value of equipment that did not fall within the coverage provided by the
12 Policy, and there is no coverage by estoppel under California law.
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14 4. In the alternative, USAA CIC is entitled to partial summary judgment of
15 Plaintiffs' second cause of action for breach of the implied covenant of good faith
16 and fair dealing because the uncontested facts establish that USAA CIC and
17 Plaintiffs had a genuine dispute as to the valuation of the subject vehicle, and the
18 Genuine Dispute Doctrine precludes any further recovery.
19

20 5. In the alternative, USAA CIC is entitled to partial summary judgment of
21 Plaintiffs' third cause of action for unlawful or unfair business practices because
22 USAA CIC did not act unlawfully or unfairly in its handling of the claim, and there
23 can be no damages by a private plaintiff under California law.
24

6. In the alternative, USAA CIC is entitled to partial summary judgment of Plaintiffs' punitive damages claim because the uncontroverted facts establish that there is no evidence that USAA CIC engaged in any conduct that rises to the level of despicable, fraudulent, oppressive, or malicious, and no evidence which satisfies the required evidentiary standard of clear and convincing evidence.

This Motion will be based upon this Notice of Motion and Motion, Memorandum of Points and Authorities in Support of the Motion, the Separate Statement of Uncontroverted Facts and Conclusions of Law, the Evidence in Support of the Motion, the declaration of Krystin Benfield and the accompanying exhibits, the declaration of Joshua N. Kastan and the accompanying exhibit, all pleadings and papers on file herein, and other matters as may be presented to the Court before and at the Motion hearing.

I.
CERTIFICATION PURSUANT TO LR 7-3

This Motion is made following a conference of counsel pursuant to Local Rule 7-3 and this Court's Initial Standing Order, which took place by way of telephone conference on October 18, 2019 and further conferral in person on October 21, 2019 through October 24, 2019, and follow up e-mail thereafter. (Declaration of Joshua N. Kastan ¶ 4.)

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1 Dated: October 25, 2019

DKM LAW GROUP, LLP

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By /s/Joshua N. Kastan

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USAA CASUALTY INSURANCE

COMPANY